

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**TIFFANY HAMMOND and TAMMY
HAMMOND,**

Plaintiffs,

v.

JANICE KIM, et al.

Defendants.

**Hon. Esther Salas
Civil Action No. 13-cv-435(ES)(JAD)**

**REPORT AND
RECOMMENDATION**

JOSEPH A. DICKSON, U.S.M.J.

This matter comes before the Court upon Plaintiffs' motion to remand this case from the District of New Jersey to the Superior Court of New Jersey, Union County, Law Division pursuant to 28 U.S.C. § 1447 (the "Motion to Remand"). The Hon. Esther Salas, U.S.D.J. referred Plaintiffs' Motion to this Court for a Report and Recommendation. Pursuant to Federal Rule of Civil Procedure 78, the Court did not hear oral argument. After having considered the parties' submissions, and for good cause shown; and

WHEREAS, on or around October 10, 2012, Plaintiffs originally filed this matter in the Superior Court of New Jersey, Union County, Law Division, (Compl., ECF No. 1); and

WHEREAS Defendant United States of America¹ removed the matter to this District on or about January 22, 2013, pursuant to the provisions of 28 U.S.C. § 1442; and

¹ Plaintiffs' Complaint originally named Oscar Alvarez-Matta as a defendant. As Mr. Alvarez-Matta was acting within the scope of his employment as an employee of the United States at the time of the conduct alleged in the Complaint, the United States of America was substituted into the action in place of Mr. Alvarez-Matta, pursuant to 28 U.S.C. § 2679(d). (Notice of Removal, ECF No. 1 at 2-3).

WHEREAS Defendants United States of America, the United States Department of Justice and the United States Marshal's Service (collectively, the "Federal Defendants") filed a motion to dismiss Plaintiffs' claims against them. (ECF No. 3). Plaintiffs did not oppose that application; and

WHEREAS, by Order dated August 26, 2013, the Hon. Esther Salas, U.S.D.J. granted the Federal Defendants' motion and dismissed all claims against those entities; and

WHEREAS Plaintiffs filed the instant Motion to Remand on November 27, 2013, seeking to remand this action pursuant to 28 U.S.C. § 1447, arguing that the District Court no longer has subject matter jurisdiction over this matter now that all claims against the Federal Defendants have been dismissed. (ECF No. 15); and

WHEREAS this Court finds that the claims set out in Plaintiffs' Complaint, which concern a motor vehicle accident that occurred on or about September 9, 2011, (ECF No. 1 at 4-15), and seek relief for injuries Plaintiffs allegedly suffered in that accident, do not "aris[e] under the Constitution, laws, or treaties of the United States." The District Court does not, therefore, have federal question subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331; and

WHEREAS, while there is complete diversity of citizenship between Plaintiffs and all remaining Defendants,² Plaintiffs have certified that the amount in controversy in this matter does not exceed \$75,000. (ECF No. 15 at 3). The Court finds, therefore, that the District Court does not have diversity subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1332; and

² Plaintiffs are citizens of Delaware while the remaining defendants, Janice and Young Kim, are citizens of New Jersey. (Compl., ECF No. 1 at 12).

WHEREAS, the Court finds that, given the dismissal of the Federal Defendants, the District Court no longer has subject matter jurisdiction over this matter; and

WHEREAS, the Court notes that 28 U.S.C. § 1447(c) provides, in pertinent part: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded."; and

WHEREAS no party has filed any opposition to Plaintiffs' Motion to Remand,

IT IS on this 17th day of January, 2014,

RECOMMENDED that Plaintiffs' Motion to Remand be **GRANTED** pursuant to 28 U.S.C. § 1447(c); and

IT IS FURTHER RECOMMENDED that the District Court remand this matter to the Superior Court of New Jersey, Union County, Law Division .

SO ORDERED



JOSEPH A. DICKSON, U.S.M.J.

cc: Honorable Esther Salas, U.S.D.J.